

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/667,329 Confirmation No.: 1653
Applicant : John HANE
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Title : SYSTEM, METHOD AND SOFTWARE APPLICATION FOR
SECURE COMMUNICATION
TC/Art Unit : 2136
Examiner: : Eleni A. Shiferaw
Docket No. : 57132.000008
Customer No. : **21967**

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REQUEST FOR PRE-APPEAL BRIEF CONFERENCE

Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicant hereby requests a pre-appeal brief conference in the above-referenced case. No amendments are being filed with this request. Additionally, this request is being filed with a Notice of Appeal. This application is appropriate for a pre-appeal brief conference and Applicant respectfully requests careful consideration of the below arguments in support of a request for pre-appeal brief conference.

Claims 24-32 are pending. The Final Office Action dated November 2, 2009, ("Office Action") rejects claims 24-32 under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 6,289,389 to Kikinis ("Kikinis") in view of U.S. Patent Application Publication No. 2002/0106086 to Kamiya ("Kamiya"). As discussed in detail herein, the rejections are improper at least because the cited art, alone or in combination, fails to disclose each and every limitation of the pending claims.

Regarding claim 24, the Office Action alleges that an embodiment of the claimed invention would have been obvious in view of Kikinis and Kamiya. In particular, the Examiner asserts that Kikinis discloses “selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets,” and “selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from the first transmission time and the second frequency is different from the first frequency,” as recited in claim 24 (emphasis added). Applicant respectfully disagrees that Kikinis discloses transmitting first set of data packets and the second set of data packets via a single transmission mode. Rather, Kikinis discloses that the data packet is appropriately tagged with an IP address for identification by control software running in PC 19 and transmitted via the satellite 37. *See, e.g.*, column 6, lines 28-32. Also, Kikinis discloses that a decryption key may be sent back to the user via digital link 53 of Fig. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC. *See, e.g.*, column 6, lines 33-37. In fact, the Examiner admits, in the Response to Arguments section of the Office Action, that Kikinis discloses two different transmission paths. Thus, Applicant respectfully submits that Kikinis discloses the transmission of data packets via two disparate transmission modes and fails to disclose, or even suggest, “selecting and addressing said first set of data packets for transmission at a first transmission time via a first channel of a transmission mode at a first frequency, and automatically attaching a first address to said first set of data packets,” and “selecting and addressing said second set of data packets for transmission at a second transmission time via a second channel of the transmission mode at a second frequency, wherein the second transmission time is different from

the first transmission time and the second frequency is different from the first frequency,” as recited in claim 24 (emphasis added).

Also, the Office Action admits that Kikinis fails to disclose, or even suggest, at least the steps of transmitting the first set of data packet “at a first transmission time via a first channel,” transmitting the second set of data packets “at a second transmission time via a second channel,” and “wherein the second transmission time is different from the first transmission time,” as recited in claim 24. *See, e.g.*, Office Action page 6. Instead, the Examiner improperly relies on Kamiya to remedy the deficiencies of Kikinis. Specifically, the Examiner asserts that it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the teachings of Kamiya within the system of Kikinis. Applicant respectfully disagrees with the proposed combination of cited references. Applicant submits that the Office Action fails to establish a *prima facie* case of obviousness. In fact, the Kamiya teaches away from making the proposed combination with Kikinis. Specifically, Kikinis appears to disclose a data delivery system using an Asymmetric Point to Point Protocol (APPP), wherein PPP (e.g., data link protocol used to establish a direct connection between two nodes) is used with a selective multi-link capability installed in proxy-server 29, thereby giving it an ability to select from alternative routes back to the user, based on available information at the time the decision is made. *See, e.g.*, column 5, lines 13-23. In contrast, Kamiya discloses a data delivery system using a point to multipoint delivery network suitable for delivering large quantities of data at high speed in broadband environment. *See, e.g.*, paragraph [0075]. Therefore, Applicant submits that one having ordinary skill in the art at the time the invention was made would have *no* reason to combine the point to multipoint delivery network of Kamiya for the point to point data delivery network of Kikinis. The Office Action fails to provide any motivation or reason to combine these two disparate systems.

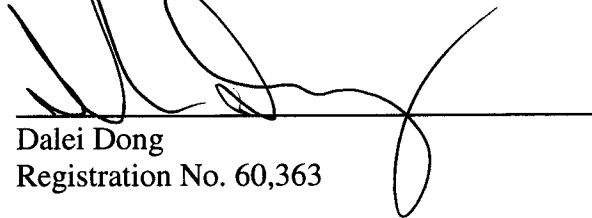
Further, Kikinis discloses that “once the encryption process has taken place and the key has been sent via land, the data packet proceeds through digital link 55 to satellite sending dish 45 where it is broadcast to home receiving dish 23.” *See, e.g.*, column 6, lines 36-41. Therefore, Kikinis discloses delivering the key and the data simultaneously via different networks. In contrast, Kamiya discloses that content and key information are delivered at different times, for example, hours or days apart. *See, e.g.*, paragraph [0023]. Therefore, one having ordinary skill in the art at the time the invention was made would have *no* reason to combine the transmission of content and key at different times of Kamiya for the simultaneous transmission of content and key of Kikinis.

Moreover, Kikinis discloses an Internet delivery system having a modem-connected land based Internet connection through a public-switched telephone network (PSTN), and a satellite transmission system. *See, e.g.*, column 3, lines 46-50. In contrast, Kamiya discloses a high-speed multipoint delivery network and a storage medium of magnetically readable medium, an optically readable medium, and a semiconductor memory delivered by postal service, home delivery service, or other conventional delivery services. Therefore, one having ordinary skill in the art at the time the invention was made would have *no* reason to combine the postal service of Kamiya for the public switched telephone network (PSTN) of Kikinis. Accordingly, for at least the reasons stated above, the rejection of claim 24 is improper over Kikinis in view of Kamiya and should be withdrawn.

Regarding claims 25 and 26, although different in scope, these claims recite subject matter related to claim 24. Thus, the arguments set forth above with respect to claim 24 are equally applicable to claims 25 and 26. Accordingly, Applicant respectfully submits that claims 25 and 26 are allowable over Kikinis in view of Kamiya for the same reasons as set forth above with respect to claim 24.

As each and every claim limitation is not disclosed by the combination of Kikinis and Kamiya and the Office Action fails to properly address at least these claim limitations, the obviousness rejection is improper and should be withdrawn. Thus, in view of the foregoing, an appeal on that basis will likely succeed, but the time and expense in preparing an appeal brief on that issue should not be borne by Applicant when the grounds are so clearly improper.

Respectfully submitted,



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